



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 31:190. Alternative Fuel, Gasification, and Renewable Energy Facility Refunds on  
5 Construction Costs.

6 RELATES TO: KRS 139.517, 139.720, 154.27-010, 154.27-070

7 STATUTORY AUTHORITY: KRS 131.130(1), 139.517(4)(d), 139.710

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the  
9 Department of Revenue to promulgate administrative regulations necessary for the administration  
10 and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer  
11 the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and  
12 administration of taxes. KRS 139.517 establishes the sales tax incentive for alternative fuel,  
13 gasification and renewable energy facilities. This administrative regulation establishes  
14 requirements for a sales and use tax refund relating to the construction, retrofit, or upgrade of an  
15 alternative fuel, gasification, or renewable energy facility.

16 Section 1. Definitions. (1) "Activation date" is defined in KRS 154.27-010(1).

17 (2) "Alternative fuel facility" is defined by KRS 154.27-010(3).

18 (3) "Approved company" is defined in KRS 154.27-010(5).

19 (4) "Authority" is defined in KRS 154.27-010(6).

20 (5) "Construction period" is defined in KRS 154.27-010(14)(~~13~~).

21 (6) "Eligible project" is defined in KRS 154.27-010(16)(~~15~~).

(7) "Facility" is defined in KRS 154.27-010(20)(~~17~~).

(8) "Gasification facility" is defined in KRS 154.27-010(22)(~~19~~).

(9) "Renewable energy facility" is defined in KRS 154.27-010(26)(~~24~~).

(10) "Retrofit" is defined in KRS 154.27-010(28)(~~26~~).

(11) "Upgrade" is defined in KRS 154.27-010(32)(~~30~~).

Section 2. Refund Application Requirements. (1) The approved company shall file requests for refunds with the Department of Revenue annually within the sixty (60) day deadlines provided for in KRS 139.517(4) and according to the activation date requirements of KRS 154.27-070.

(2) Refund requests shall be postmarked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required to qualify for consideration and shall include the following:

(a) Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund, Form 51A301;

(b) Information Sharing and Assignment Agreement for Designated Refund Claims, Form 51A290~~[, which is incorporated by reference in 103 KAR 3:020]~~. This agreement shall be completed and signed by the approved company, the subcontractor or contractor (purchaser), and the vendor as applicable;

(c) Expenditure Report for Alternative Fuel, Gasification, and Renewable Energy Facility Refunds, Form 51A302, from each purchaser detailing all tangible personal property used in the construction, retrofitting, or upgrading of an eligible project and the total corresponding Kentucky sales and use tax paid; and

(d) Sample invoices between each purchaser and vendor.

(3) Failure to file the request for a refund within the sixty (60) day deadlines shall result in the

1 forfeiture of the refund for that year and the amount forfeited shall not be subject to a refund  
2 request for any subsequent years.

3 Section 3. Record-keeping Requirements. The approved company shall keep adequate and  
4 complete records supporting its refund request for periods not less than four (4) years as provided  
5 for in KRS 139.720. The department may audit the records of all parties involved as necessary to  
6 verify the refund request and to ensure compliance with KRS 139.517.

7 Section 4. Forms. The forms listed herein may be inspected, copied, or obtained, subject to  
8 applicable copyright law, at:

9 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

10 (2) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

11 (3) The department website at <http://revenue.ky.gov>.

12 ~~[Incorporation by Reference. (1) The following material is incorporated by reference:~~

13 ~~—(a) "Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility~~  
14 ~~Sales and Use Tax Refund", Form 51A301, December 2008; and~~

15 ~~—(b) "Expenditure Report for Alternative Fuel, Gasification, and Renewable Energy Facility~~  
16 ~~Refunds", Form 51A302, December 2008.~~

17 ~~—(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at~~  
18 ~~the Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday,~~  
19 ~~8 a.m. until 5 p.m. (35 Ky.R. 1952; 2005; eff. 4-3-2009; TAm 6-22-2016.)]~~

103 KAR 31:190

APPROVED BY AGENCY:

*Daniel Bork*  
DANIEL P. BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

9/12/17  
Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on October 24, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 31:190

Contact Person: Lisa Swiger

Phone Number: (502) 782-5705

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 31:190 contains repealed regulatory references as it relates to forms and prior Department of Revenue address and contact information. The current version also contains prior statutory references related to definitions contained within KRS 154.27-010. The proposed amendment updates the current regulatory language to address and correct these issues.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. Repealed regulatory form references are removed along with statutory definition references, DOR contact and address information is also updated.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to

take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current department budgetary funding and staff will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new funding or increase in fees is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) : No. Tiering is not applied as all parties affected by this regulation will be treated the same.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 31:190

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: